

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:24-cv-00097

Barry Emmett,
Plaintiff,

v.

Unknown et al.,
Defendants.

ORDER

Plaintiff Barry Emmett, proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 and sought leave to proceed *in forma pauperis*. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636(b).


On March 19, 2024, the magistrate judge issued a report recommending that the complaint be dismissed without prejudice as barred by 28 U.S.C. § 1915(g) unless the plaintiff paid the filing fee within fifteen days. Doc. 8. She also recommended that the seven other inmates listed as co-plaintiffs on the complaint be terminated as parties due to their failure to sign the complaint and the prohibition against laymen representing other parties. *Id.* at 3–4. Plaintiff Emmett has not filed written objections. However, one of the purported co-plaintiffs, Travarus Shead, has filed a “Motion for Leave to Reconsider,” which the court construes as an objection to the portion of the report recommending his termination from this suit. Doc. 10.

The court reviews the objected-to portions of a magistrate judge’s report and recommendation de novo. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The magistrate judge recommended dismissal because the plaintiff did not pay the filing fee and is barred by 28 U.S.C. § 1915(g) from proceeding *in forma pauperis*. Doc. 8. Mr. Shead’s objection does not refute that basis for dismissal. Rather, he asserts that he and other co-plaintiffs should be permitted to proceed with their claims in this action.

But, as the magistrate judge correctly pointed out, neither Mr. Shead nor the other purported co-plaintiffs are actual parties to this suit, because their signatures do not appear on the complaint as filed with the court. *See* Fed. R. Civ. P. 11(a) (requiring signature of party or counsel on pleading). Moreover, as this dismissal is without prejudice even with respect to Mr. Emmett, Mr. Shead and his fellow inmates remain free to pursue their claims individually by filing their own separate complaints and satisfying the filing fee requirement for each case.

Having reviewed the magistrate judge's report de novo, and being satisfied that it contains no error, the court overrules Mr. Shead's objections and accepts the report's findings and recommendation. This case is dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

So ordered by the court on May 2, 2024.



J. CAMPBELL BARKER
United States District Judge